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17 APR 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Administration Bill to Liberalize the Hatch Act

1. Attached, Tab A, is a copy of a proposed Administration bill to amend and liberalize the Hatch Act. Coordination, not including CIA, is being conducted by OMB. OGC requested the attached from CSC for our possible comment. Tab B is a copy of the present regulations governing political activities as published in the Federal Personnel Manual. Tab C is a copy of the Agency regulation.

Principal Changes

2. The principal changes in the Administration bill to present procedures of concern to the Agency, are as follows:

Administration Bill

- a. Allows Government employees to participate in local elections on a partisan basis, provided the elected position is a part-time and not full-time basis.
- b. Allows CSC to designate a geographic area where an employee may engage in local political activities whenever 20 percent of the voters are Federal employees.

Present Procedures

- a. Presently, Government employees may participate in local elections but on an independent nonpartisan basis only.
- b. Presently, the CSC has designated the metropolitan Washington, D.C. area and may designate any area where the majority of voters are Federal employees.

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c. Grants CSC exclusive and full administrative authority to investigate and adjudicate alleged violations for both the competitive and excepted services. Sec. 7328 requires that an employee having reason to believe that another employee has violated the law must report it to the CSC. The CSC is given authority to subpoena witnesses and documents. The minimum punitive sanction is reduced from 30 to 5 days suspension.

d. Grants an employee the express right of an appeal to the United States Court of Appeals.

e. Grants to agency heads the same authority as they have under present CSC regulations.

c. Presently, the CSC may investigate and adjudicate cases in the competitive service only. The head of an agency in the excepted service makes his own investigation and adjudication. However, there is a right of appeal to the CSC when a decision is made to terminate. Under the appeal procedures, if the CSC finds by unanimous vote that the violation does not warrant removal, penalty of not less than 30 days suspension without pay is to be imposed at the direction of the Commission (Sec. 733.203 - attached Tab B). (Though not expressly stated, the CSC action would reverse the decision of an agency head.)

d. Presently, a CSC decision may be appealed to the U.S. District Court. The regulations of excepted agencies are to include notification of an employee of his right to appeal to the CSC when a decision is made to terminate (Section. 733.203 - attached Tab B).

e. Presently, regulations by CSC provide that the head of an agency may prohibit or limit the participation of an employee in political activities if participation would "interfere with the efficient performance of official duties or create a conflict or apparent conflict of interests" (Sec. 733.111(b) - attached Tab B).

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Effect Upon CIA

3. A significant change is the broadening to permit participation in partisan local elections. The impact of this relaxation would be difficult to predict. Agency employees have run for and held responsible non-partisan elected local office in the Washington, D. C. area without incident. Each case, as in the past, will have to be judged separately. Of concern is whether the statutory requirement upon the CSC to investigate and adjudicate all violations and the statutory right of court review impair the authority of the Director under Section 102(c) of the National Security Act of 1947 and contravene Section 6 of the CIA Act of 1949 which precludes the disclosure of the functions and names of Agency personnel for the protection of sources and methods.

4. Under the Administration bill, the CSC would conduct an investigation into an employee's political activities since any suspected violation is to be reported to the CSC. However, due to cover and other security considerations, an investigation into the personal activities of an Agency employee, be it political activities or otherwise, requires that it be handled internally and not subject to any external review. Further, cover and other security factors may prohibit an employee from engaging in political activities which might otherwise be permitted in a nonsensitive agency. These considerations differ sharply from the criteria exercised by the CSC in its adjudications.

5. It can be argued that the discretionary authority granted to an agency head under present CSC regulations (Tab B - Sec. 733.111(b)) and under Section 7322(b) of the Administration bill to deny political activities in instances of "conflict of interests" would include matters of national interest such as cover and other factors peculiar to the Agency. If the Director were to follow this approach, however, then other provisions of the bill may apply, including the investigative procedures and court review. A sounder approach to preserve the integrity of the Director's authority under Sec. 102(c) is to acknowledge that the bill, as the present law, prescribes the permissive and prohibitive parameters of political activities for employees. This, however, would not preclude the Director from exercising his authorities under the National Security Act and the CIA Act to limit or prohibit political activities. If termination became necessary, it would be under the Director's removal authority, Section 102(c), rather than the Hatch Act. The review provisions of the Hatch Act, therefore, would not apply. Though a contested issue on this point has never arisen, this would be the approach under present procedures should one occur and the same would apply to the Administration bill.

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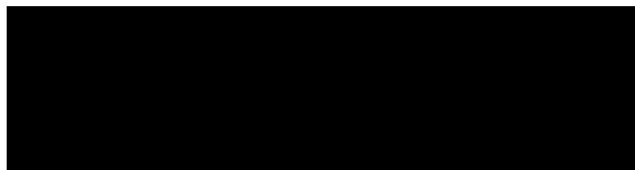
6. An exemption for the Agency from the Administration bill may be considered the only positive way to be assured that the Director's authorities are not impaired. This action would not serve the Agency's interest. The bill extends what is considered a fundamental constitutional right of freedom of political expression. To seek exemption, even on sound national security grounds, would be impolitic and we would undoubtedly stand alone. Undoubtedly, the same reaction would result even if our exemption is limited to only the appeal procedures.

7. Accordingly, two courses of action are open:

a. Prepare a response to OMB or CSC stating that the Agency has no objection to the bill, but making it clear that security considerations require that the Director, under his statutory authorities, will continue to maintain exclusive jurisdiction over any cases of political activity by Agency employees.

b. Take no action on the proposed bill, accepting it as a liberalization of political activities by employees which we will judge as we do now on a case by case basis. Should an issue become so aggravated as to result in dismissal and a court case ensue, the Director would be prepared to defend on the basis of his authority under Section 102(c).

8. Under the circumstances, it would seem best to follow action 7b above.



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attachments

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